IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 277 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

AHMEDABAD MFG &CALICO PRINTING CO. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 277 of 1994
MR MIHIR H JOSHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of assessment year 1976-77 :-

"Whether, the Appellate Tribunal is right in law and on facts in holding that salary and wages payable under the award amounting to Rs.16,76,000/- is an admissible deduction, though the said amount was neither paid to the employees nor it was debited in the accounts ?"

2. We have heard Mr Mihir H Joshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention has been invited to the decision dated 1.4.1998 of this Court in the case of this very assessee being Income-tax Reference No. 154 of 1983. In the said decision, this Court followed the principle laid down by the Supreme Court in Kedarnath Jute Manufacturing Co. Ltd. vs. CIT, 81 ITR 363 that the question whether the assessee is entitled to a particular deduction or not would depend on the provisions of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in his books of accounts be decisive or conclusive in the matter. This Court accordingly answered a similar question in favour of the assessee.

4. Following the aforesaid decision, our answer to the question referred in this reference is in the affirmative i.e. in favour of the assessee and against the revenue.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-